

MISSOURI COURT OF APPEALS EASTERN DISTRICT
OPINION SUMMARY

SHARNIQUE JONES,)	No. ED103712
)	
Appellant,)	Appeal from the Circuit Court of
)	St. Louis County
vs.)	
)	
STATE OF MISSOURI,)	Honorable Colleen Dolan
)	
Respondent.)	Filed: March 21, 2017

Sharnique Jones (“Movant”) appeals from a judgment denying her Rule 29.15 post-conviction relief motion. On appeal, Movant argues trial counsels were ineffective for (1) failing to investigate and elicit information from medical witnesses at trial that her daughter, S.J., was on phenobarbital when she stopped breathing; (2) failing to submit a lesser-included offense instruction of third-degree assault, as a lesser-included offense for first-degree assault; (3) failing to preserve the issue of *corpus delicti* for the second-degree murder charge; (4) failing to submit a lesser-included offense instruction of second-degree endangering the welfare of a child, as a lesser-included offense for second-degree murder; and (5) failing to request the removal of a sleeping juror.

AFFIRMED.

DIVISION THREE HOLDS: The motion court did not err in denying Movant’s Rule 29.15 motion because (1) Movant failed to identify the medical witnesses by name, state what their testimony would have been at trial, and connect a specific portion of her theory to a particular witness. In addition, Movant’s claims are refuted by the record; (2) trial counsels’ decision not to request a lesser-included offense instruction of third-degree assault was reasonable trial strategy. Counsels had no duty to request an instruction that would undermine the defense theory; (3) the Missouri Supreme Court already addressed the issue of *corpus delicti* on direct appeal, and thus the issue could not be relitigated in a post-conviction proceeding. Further, failure to preserve error for appellate review is not cognizable in a Rule 29.15 motion; (4) second-degree endangering the welfare of a child is not a lesser-included offense for second-degree murder, pursuant to section 556.046.1(1), and thus counsels are not ineffective for failing to request an instruction to which Movant was not entitled; and (5) Movant failed to prove either that the juror was sleeping or that she was prejudiced.

Opinion by: Angela T. Quigless, P.J.

Robert G. Dowd, Jr., J. and Lisa Van Amburg, J., Concur.

Attorney for Appellant: Amy E. Lowe

Attorney for Respondent: Shaun J. Mackelprang

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